

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(112)

CWP-14284-2022

Date of decision: - 01.02.2023

Julfan Mohd.

....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. R.K. Agnihotri, Advocate,
for the petitioner.

Ms. Upasana Dhawan, AAG, Haryana
for respondents No.1 to 3.

VIKAS BAHL, J. (ORAL)

This writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for setting aside the impugned order dated 26.04.2017 (Annexure P-3) passed by the Collector, Yamuna Nagar-respondent No.3, whereby respondent No.4 has been appointed as the Lambardar of village Peerwali; order dated 12.10.2021 (Annexure P-4) passed by the Commissioner, Ambala Division, Ambala-respondent No.2, whereby the appeal filed by the petitioner has been dismissed and the order dated 08.03.2022 (Annexure P-5) whereby the review application filed by the petitioner has also been dismissed; and also for setting aside the order dated 25.04.2022 (Annexure P-6) whereby the revision petition filed by the petitioner has been dismissed by the Financial Commissioner,

Haryana, Chandigarh-respondent No.1.

Brief facts of the present case are that on account of the death of Umar Din son of Nanu @ Nanu Din, General Category Lambardar, resident of village Peerwali, Sub-Tehsil Sadhaura, Tehsil Bilaspur, District Yamuna Nagar, proceedings were initiated for filling up the post as per rules and in pursuance of the same, four candidates including, the present petitioner and respondent No.4, had applied. It would be relevant to note that father of the present petitioner had also applied for the post of Lambardari. After the withdrawal of the application by two candidates, only the petitioner and respondent No.4 remained in the zone of consideration. The Sub-Tehsildar Sadhaura recommended the name of respondent No.4 for being appointed as the Lambardar and had sent the file to Tehsildar, Bilaspur. The Tehsildar, Bilaspur also found respondent No.4 suitable for appointment to the post of Lambardar and forwarded the case to the Sub-Divisional Officer (Civil), Bilaspur, who had also recommended the name of respondent No.4 for being appointed as the Lambardar. The Collector, vide order dated 26.04.2017 (Annexure P-3), after considering the merits and demerits of the petitioner and respondent No.4, appointed respondent No.4 as the Lambardar of the village. It was observed by the Collector that respondent No.4, was a graduate in comparison to the present petitioner, who was a matriculate and had been recommended by all the revenue officers and had also participated in development projects, and thus, was a more suitable for being appointed as the Lambardar. While appointing respondent No.4 as Lambardar, even the points highlighted by

respondent No.4 to the effect that respondent No.4 offered donations to various societies and was also a blood donor and had inspired people to invest in small investments and was 28 years of age, were also taken into consideration. The petitioner filed an appeal before the Divisional Commissioner, Ambala Division, Ambala Cantt. and the Divisional Commissioner, vide order dated 12.10.2021, dismissed the same after observing that there was no perversity or illegality in the order of the Collector, Yamuna Nagar and that the merits and demerits of the candidates had been duly considered by the Collector, Yamuna Nagar and respondent No.4, who had done social work and had a good image in the eyes of respectable members of society, had all the qualities to be appointed to the post of Lambardar and thus, had been rightly appointed as Lambardar. Various judgments of Co-ordinate Benches of this Court, including the judgment in case titled as **“Om Parkash Vs. State of Haryana and others”**, ***reported as 2015(1) P.L.J. 507***, wherein, the aspect of better educational qualifications being necessary, were taken into consideration by the Divisional Commissioner. The argument of learned counsel for respondent No.4 to the effect that matriculate certificate produced by the present petitioner was forged and also that verification had been done by the SDO (Civil), Bilaspur, in which, a reference has been made to letter dated 03.08.2017, whereby the State Open School Academic Institute had informed that the certificate belonging to the present petitioner was not issued by their Institute as well as the fact that the Secretary, Secondary Education Council had also informed that the certificate produced by the present petitioner was not

admissible, was also taken note of. The further argument of the counsel for respondent No.4 to the effect that Umardin, grandfather of the present petitioner, was a defaulter of the electricity department and that the present petitioner had also not paid the dues pending on behalf of his grandfather before the electricity department, was also noticed. The review application filed by the petitioner before the Divisional Commissioner, Ambala Division, Ambala Cantt. was also dismissed vide order dated 08.03.2022 (Annexure P-5). The petitioner then filed a revision petition before the Financial Commissioner, Haryana, which was also dismissed, vide order dated 25.04.2022 (Annexure P-6). It is the aforesaid orders (Annexures P-3 to P-6), which are the subject matter of present writ petition.

Learned counsel for the petitioner has submitted that the petitioner is more meritorious than respondent No.4 and thus, the petitioner should have been appointed as the Lambardar. It is further submitted that argument of respondent No.4 raised before the authorities to the effect that the certificate of the present petitioner for matriculation examination is fake and forged is incorrect, inasmuch as, the certificate of the petitioner is valid. It is also submitted that the impugned orders deserve to be set aside and the petitioner deserves to be appointed as the Lambardar. It is argued that father of respondent No.4 is in illegal encroachment of panchayat land and for the same, reference has been made to the jamabandi for the year 2016-2017 (Annexure P-7).

This Court has heard learned counsel for the petitioner and has gone through the paper-book.

A coordinate Bench of this Court in **CWP-1318-2008** decided on 11.02.2015 titled as **“Pishora Singh vs. State of Punjab and others”** has held as under:-

*“11. A perusal of the record shows that District Collector after appreciating the comparative merit found the petitioner to be fit and suitable candidate and appointed him as such. In view of law laid down by Hon’ble the Supreme Court of India in the case of **Mahavir Singh Vs. Khiali Ram & others, 2009(3) SCC-439, Lila Ram Vs. Asa Ram, 1995 Lahore Law Times-29** followed by Division Bench of this Court in the case of **Phool Kumar Vs. State of Haryana and others, 2010(2) RCR (Civil) 819**, the choice of the District Collector cannot be lightly set aside. It can only be set aside if there is perversity or illegality in the order of the Collector.*

12. In Mahavir Singh's case (supra) the Hon'ble Supreme Court of India has observed that there should be no interference with the choice made by the Collector in the matter of appointment of Lambardar even if two views are possible. It is only the prerogative of the Collector to compare the merits of the candidates for appointment to the post of Lambardar. Therefore, there is no doubt with regard to the proposition of law that choice of the Collector cannot be lightly set aside. The finding of the District Collector has been affirmed by the Commissioner.”

A perusal of the above judgment would show that reliance was placed upon judgment of the Hon'ble Supreme Court in **Mahavir Singh Vs. Khiali Ram & others**, reported as **2009(3) SCC-439**, as well as other judgments, on the proposition in question and it was observed that the choice of the District Collector cannot be lightly set aside and it could be set aside only in case there was some perversity or illegality in the order of the Collector.

Hon'ble Division Bench of this Court in **CWP-19720-2001**

decided on 18.12.2001 titled as “***Sarwan Kumar vs. The Financial Commissioner Appeals-I, Punjab***” reported as ***2002(2) RCR (Civil) 520***, has held as under:-

“The Commissioner, Jalandhar Division, Jalandhar did not find any infirmity in the order of the Collector, but on a re-evaluation of the record, he thought that the petitioner was a better candidate and only on that ground, he allowed the appeal of the petitioner and directed his appointment in place of respondent no.3. This, in our considered view, the Commissioner could not have done and, therefore, the order passed by respondent no.1 setting aside the direction given by the Commissioner does not call for interference by this Court under Article 226 of the Constitution of India. For the reasons mentioned above, the writ petition is dismissed.”

A perusal of the above-reproduced judgment would show that in the said case the Commissioner, Jalandhar Division, Jalandhar did not find any infirmity in the order of the Collector but it was on revaluation of the record that he had come to the conclusion that the petitioner therein was a better candidate and had directed to appoint him in place of respondent no.3 therein who had been appointed by the Collector. The Division Bench had observed that the Commissioner could not have done the same and had thus, upheld the order of the Financial Commissioner vide which the order of the Commissioner had been set aside. To a similar effect is the judgment of Hon'ble Division Bench of this Court in case titled as “***Balram Vs. Financial Commissioner (Revenue), Haryana and others***”, ***dated 15.11.2012, passed in LPA No.1546 of 2012.***

The settled position of law on the proposition at hand that

the choice of the Collector is not to be lightly interfered with, unless, there is some perversity or illegality in the order, has not been disputed by learned counsel for the petitioner and no law to the contrary has been referred to by the learned counsel for the petitioner.

A perusal of the order dated 26.04.2017 (Annexure P-3) would show that the Collector, Yamuna Nagar had taken into consideration the fact that respondent No.4 was a graduate, whereas, the present petitioner even as per his own case, was a matriculate and respondent No.4 was recommended by all the revenue officers including, the Naib-Tehsildar, Tehsildar and the SDO and had also contributed to the development projects. The argument of respondent No.4 to the effect that he had offered donation to various societies and had done social service and was a blood donor and had inspired people to make investments, were also taken note of. The order of the Collector, Yamuna Nagar was, thus, legal and valid and had been passed in accordance with law. Learned counsel for the petitioner has not been able to point out any perversity or illegality in the said order and thus, as per the law laid down in the abovesaid judgments, the same deserves to be upheld. Moreover, a coordinate Bench of this Court in ***Om Parkash's case (supra)*** had observed that in the present era, better educational qualifications are necessary as everything is to be done in writing and thus, a more educated person is more suitable for being appointed as the lambardar. Relevant portion of the said judgment is reproduced hereinbelow:-

“xxx xxx xxx xxx xxx xxx xxx xxx xxx

11. Besides this, Ramphal has been appointed by the Collector. It is a settled principle of law that the choice of the

*Collector cannot be lightly set aside. It can only be set aside if there is perversity or illegality in the impugned order of the Collector. This view of mine is supported by the law laid down by Hon'ble the Supreme Court of India in the case of **Mahavir Singh Vs. Khiali Ram & others, 2009(3) SCC-439, Lila Ram Vs. Asa Ram, 1995 Lahore Law Times-29** followed by Division Bench of this Court in the case of **Phool Kumar Vs. State of Haryana and others, 2010(2) RCR (Civil) 819**. In **Mahavir Singh's** case (supra) the Supreme Court of India has observed that there should be no interference with the choice made by the Collector in the matter of appointment of Lambardar even if two views are possible. It is only the prerogative of the Collector to compare the merits of the candidates for appointment to the post of Lambardar.*

12. *Against the settled law, choice of the Collector has been wrongly upset by the Commissioner and Financial Commissioner without recording any finding of perversity in this regard. Therefore, the impugned orders passed by Commissioner and Financial Commissioner are illegal, arbitrary and against the settled principles of law.*

13. *So far as plea of learned senior counsel for Rajbir that he is acting as Lambardar of the village for about 15 years, therefore, writ petitions be dismissed is concerned, same cannot be accepted as any benefit derived during the pendency of the writ petition cannot be taken into consideration.*

14. *So far as contention of the learned counsel for Om Parkah that he is having 15 acres of land whereas Ramphal and Rajbir are having seven acres of land is concerned, it can be one of the factors, whereas cumulative effect of the overall comparative merits has to be taken into consideration. However, in the present era better educational qualification is necessary as everything is to be done in writing, therefore, more educated person is the more suitable person for the appointment.*

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17. *In view of above, CWP No.5725 of 2000 is allowed. Impugned order dated 02.11.1998 (Annexure P-2) passed by Commissioner, Hisar, and order dated 20.10.1999 (Annexure P-3) passed by Financial Commissioner, Haryana are set aside and order*

dated 04.06.1997 (Annexure P-1) passed by Collector, Hisar, is restored.”

In the above-said case, Ramphal who was more educationally qualified than the other candidates therein, was appointed by the Collector but his appointment was set aside by the Commissioner and even the Financial Commissioner did not choose to appoint him. Coordinate Bench of this Court, after observing that the orders passed by the Commissioner and Financial Commissioner did not find any perversity in the order of the Collector, set aside the orders of the Commissioner and Financial Commissioner and upheld the order of the Collector appointing the said Ramphal as the Lambardar. It would be relevant to note that the other candidate, namely, Om Parkash had 15 acres of land as compared to Ramphal, who had 7 acres and 2 kanals of land and that the candidate Rajbir had been acting as the Lambardar since the past 15 years and was 30 years of age as compared to Ramphal who was 40 years of age. Educational qualification of Ramphal was given due importance while allowing the said Writ Petition.

The Divisional Commissioner, Ambala Division, Ambala Cantt., vide order dated 12.10.2021 dismissed the appeal filed by the present petitioner and reiterated the settled preposition of law to the effect that the interference in the order of the Collector, Yamuna Nagar would only be called for in case there is perversity or illegality in the said order and since there was no perversity or illegality, the order of the Collector, Yamuna Nagar, the same was upheld. It was further observed that respondent No.4 had a good image in society and had all the qualities to

be appointed to the post of Lambardar and was a capable candidate for the post of Lambardar. The review application filed by the petitioner before the Divisional Commissioner, Ambala Division, Ambala Cantt. was also dismissed vide order dated 08.03.2022 (Annexure P-5) and the revision petition filed by the petitioner was dismissed by the Financial Commissioner, Haryana. The said orders have been passed in accordance with law and do not call for any interference.

It would be relevant to note that the Divisional Commissioner had taken note of the argument of the counsel for respondent No.4 (herein) to the effect that the matric certificate produced by the petitioner was forged and that regarding the same, verification was conducted by the Sub-Divisional Officer (Civil) Bilaspur, in which the State Open School Academic Institute had informed vide Letter no.RJOSUP/Admin./1308/2017 dated 03.08.2017 that the certificate belonging to the petitioner was not issued by their institute and that the Secretary Secondary Education Council had informed that the Certificate submitted by the petitioner was not admissible. Although, learned counsel for the petitioner has disputed the said fact, however, neither the letter dated 03.08.2017 has been placed on record, nor any other document rebutting the said plea of respondent No.4, has been annexed. At any rate, since the order of the Collector, Yamuna Nagar does not suffer from any perversity or illegality, thus, the orders of the authorities appointing respondent No.4 as the Lambardar do not call for any interference.

The argument of learned counsel for the petitioner to the effect that father of respondent No.4 had illegally encroached panchayat

land is absolutely misconceived for the following reasons: -

- (i) No such argument had been raised by the petitioner before the Collector. The question of order of the Collector being perverse or illegal on the basis of an argument which was never even raised, thus, does not arise.
- (ii) No such argument was raised before the Commissioner either at the time of passing of the order dated 12.10.2021 or at the time of dismissal of the review application, vide order dated 08.03.2022.
- (iii) No order of any Court showing that respondent No.4 or his father is in illegal occupation of panchayat land has either been referred to or argued before this Court. It is not even the case of the petitioner that any proceedings under any Act against respondent No.4 or his father, being in alleged illegal possession of panchayat land has been initiated.
- (vi) No law has been referred to by learned counsel for the petitioner on the aspect that even if assuming that the father of respondent No.4 is in illegal occupation of panchayat land, the same would call for disqualification of respondent No.4 to be appointed as Lambardar.
- (v) Reliance sought to be placed upon jamabandi for the year 2016-2017 (Annexure P-7), regarding which no reference has been made in the order of the Collector or the Divisional Commissioner also, does not further the case of the petitioner, inasmuch as, the same also does not show that

father of respondent No.4 was in illegal occupation of panchayat land alongwith other persons. One Islam, who, as per the case of the petitioner, is the father of respondent No.4 along with several other persons is shown in the cultivation column of the jamabandi for the year 2016-2017 (Annexure P-7), in which the ownership is of “Shamlat Deh Hasab Hissa Paimana Malkiat”. No law has been referred to by learned counsel for the petitioner to show that “Shamlat Deh Hasab Hissa Paimana Malkiat” would be land vested in the gram panchayat/government authority so as to constitute illegal possession. Even assuming the said land vests in gram panchayat/government authority, then also, the said fact *ipso facto* would not show that Islam is in illegal possession of the said land. There could be various reasons for a person occupying such land, which could include possession as a lessee, licensee etc.

Keeping in view the above-said facts and circumstances, this Court is of the view that the orders passed by the respondent authorities are legal, valid and in accordance law and thus, do not call for any interference and the present writ petition being sans merit, deserves to be dismissed and is accordingly, dismissed.

February 01, 2023
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes
Yes